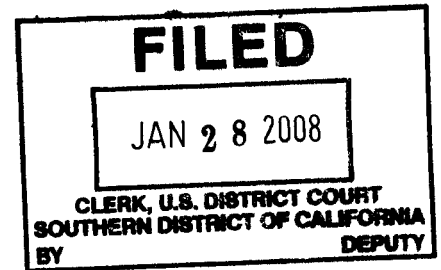


ORIGINAL



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JESUS HERNANDEZ-AVALOS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Cr. No. 07-0860GT

ORDER

On July 31, 2007, Defendant, Jesus Hernandez-Avalos ("Mr. Hernandez"), filed an Objection to this Court's Imposition of Supervised Release, which the Court assumes is a Motion to Modify his Sentence, presumably pursuant to 28 U.S.C. § 2255. For the reasons stated below, Mr. Hernandez's Objection/Motion is **DENIED**.


Mr. Hernandez correctly states that imposition of supervised release is not mandatory except under certain conditions which are not applicable in his case. 18 U.S.C. § 3583(a). Under § 3583 the court must consider the relevant factors set forth in § 3553(a). *Id.* However, Mr. Hernandez is incorrect in asserting that the Court must hold a "additional sentencing hearing" to determine

1 whether or not supervised release is appropriate. Mr. Hernandez is also incorrect in arguing that
2 the term of supervised release is an "increased penalty." The Ninth Circuit has consistently held
3 that supervised release is part of the original sentence and not an increased penalty. United States
4 v. Liero, 298 F.3d 1175, 1178 (9th Cir. 2002). Since supervised release is part of the original
5 sentence, an additional sentencing hearing is not required.

6 Additionally, the Court at the time of sentencing considered all the relevant factors in
7 §3553(a) in determining Mr. Hernandez' term of imprisonment and term of supervised release.
8 Hence, the imposition of supervised release in Mr. Hernandez' case comported with the statutory
9 requirements. Accordingly,

10 **IT IS ORDERED** that Mr. Hernandez' Motion/Objection is **DENIED**.

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13 1-24-08
14 date

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GORDON THOMPSON, JR.
United States District Judge

cc: AUSA Bruce Castetter